



SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA-2012-0023]

Social Security Ruling (SSR), 12-1p

Title II: Determining Whether Work Performed in Self-Employment by Persons Who Are Blind Is Substantial Gainful Activity and Treatment of Income Resulting from the Randolph-Sheppard Act and Similar Programs

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Ruling

SUMMARY: We are giving notice of SSR 12-1p. This SSR explains our policy for evaluating whether work performed by self-employed persons who are blind is substantial gainful activity (SGA) under the disability program in title II of the Social Security Act (Act). In addition, this ruling clarifies that we do not count the income resulting from the Randolph-Sheppard Act and similar programs as earnings when we determine whether blind persons are engaging in SGA.

EFFECTIVE DATE: [Insert the DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Andrea Stoneham, Office of Program Development and Research, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 965-6286, or, if you are deaf or hard of hearing, you may call our TTY number, 1-800-325-0778. You may also visit our Internet site, Social Security Online, at <http://www.socialsecurity.gov>.

SUPPLEMENTARY INFORMATION: Although 5 U.S.C. 552(a)(1) and (a)(2) do not require us to publish this SSR, we are doing so in accordance with 20 CFR 402.35(b)(1).

SSRs make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, special veterans benefits, and black lung benefits programs. We base SSRs on determinations or decisions made at all levels of administrative adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, or other interpretations of the law and regulations.

Although SSRs do not have the same force and effect as statutes or regulations, they are binding on all of our components. 20 CFR 402.35(b)(1).

This SSR will be in effect until we publish a notice in the Federal Register that rescinds it, or until we publish a new SSR that replaces or modifies it.

(Catalog of Federal Domestic Assistance, Program Nos. 96.001 Social Security--Disability Insurance; 96.002, Social Security--Retirement Insurance; and 96.004, Social Security--Survivors Insurance).

Dated: September 7, 2012

Michael J. Astrue,
Commissioner of Social Security.

POLICY INTERPRETATION RULING

TITLE II: DETERMINING WHETHER WORK PERFORMED IN SELF-EMPLOYMENT BY PERSONS WHO ARE BLIND IS SUBSTANTIAL GAINFUL ACTIVITY AND TREATMENT OF INCOME RESULTING FROM THE RANDOLPH-SHEPPARD ACT AND SIMILAR PROGRAMS

PURPOSE: This Social Security Ruling (SSR) explains our policy for evaluating whether work performed by self-employed persons who are blind is substantial gainful activity (SGA) under the disability program in title II of the Social Security Act (Act).¹ In addition, this ruling clarifies that we do not count income resulting from the Randolph-Sheppard Act and similar programs as earnings when we determine whether blind persons are engaging in SGA.

CITATIONS (AUTHORITY): Sections 216(i) and 223(d) of the Act, as amended; (42 U.S.C. 416(i) and 423(d)); 20 CFR 404.1572, 404.1573, 404.1575, and 404.1584; section 7 of the Randolph-Sheppard Act, as amended (20 U.S.C. 107d-3); 34 CFR 395.8 and 395.32.

INTRODUCTION: Under the disability provisions of the law, a title II disability beneficiary who performs SGA after the trial work period is not eligible for disability payments except during the first month he or she performs SGA, and the two succeeding months, whether or not he or she performs SGA in those months. We define SGA in the regulations as work that involves doing significant physical or mental activities and is the kind of work usually done for pay or profit. Work activity may be substantial even if the

¹ A person is blind if his or her visual impairment meets the definition of “blindness” in section 216(i)(1) of the Act. See 20 CFR 404.1581.

person does it on a part-time basis, or does less, is paid less, or has less responsibility than in previous work. Work activity by a self-employed person is gainful if it is the kind of work usually done for profit, whether or not the person realizes a profit. We generally do not consider activities such as self-care, household tasks, hobbies, therapy, school attendance, club activities, or social programs to be SGA. See 20 CFR 404.1572.

POLICY INTERPRETATION: For work activity performed by blind self-employed persons, we evaluate self-employment work activity based on whether the blind person has received a substantial income from the business and rendered significant services to the business.²

Substantial Income

To determine whether a blind person has received substantial income from the business, we determine the blind person's countable income in the same manner as we determine the countable income of non-blind persons. We use the Internal Revenue Service rules to determine gross income, deductions, and net income from self-employment. We then deduct the reasonable value of any significant amount of unpaid help furnished by the person's spouse, children, or others, impairment-related work expenses (if they were not already deducted from gross income as a business expense), unincurred business expenses, and any soil bank payments (if such payments were included as income by a farmer). The income remaining after we make all applicable deductions represents the actual value of work performed and is the amount we use to

² We apply this test to evaluate work activity performed by blind self-employed persons in 1978 or later. We use a different test to evaluate work activity performed by blind self-employed individuals prior to 1978. See SSR 83-34, "Titles II and XVI: Determining Whether Work Is Substantial Gainful Activity—Self-Employed Persons."

determine whether the person has engaged in SGA. We refer to this amount as the blind person's countable income. See 20 CFR 404.1575(c) and 404.1584(d).

We then compare his or her countable income from the business with the dollar amounts in our published SGA earnings guidelines for persons who are blind.³ We generally adjust the SGA guidelines annually based on increases in the national average wage index.

- If the average monthly countable income of a self-employed blind person exceeds our SGA earnings guidelines for the applicable year, we will consider the person's work activity to be SGA, unless he or she has not rendered significant services to the business.
- If the average monthly countable income of the blind person is equal to or less than the SGA earnings guidelines for the applicable year, we will not consider his or her work activity to be SGA.

Significant Services

If the countable income of a self-employed blind person exceeds our SGA guidelines for blind persons, we will consider whether he or she (if not a farm landlord⁴) has rendered significant services to determine whether the work activity is SGA. If the

³ Evaluation of a self-employed person's work activity for SGA purposes is concerned only with income that represents the person's own productivity. Therefore, before applying the earnings guidelines it is necessary to ascertain what portion of the individual's income represents the actual value of the work he or she performed. See SSR 83-34. For 1978 and later, the law establishes SGA earnings guidelines for blind persons that are higher than the SGA earnings guidelines for non-blind persons. Section 335 of Public Law 95-216, 91 Stat. 1509, 1547.

⁴ If a blind person is a farm landlord (i.e., you rent farm land to another) who materially participates in the production or the management of the production of the things raised on the rented farm, we will consider those services as significant. See 20 CFR 404.1082, 404.1575(b)(2).

blind person operates a business alone, we consider any services rendered to be significant to the business. However, if the business involves the services of more than one person, we evaluate the actual services rendered by the blind person to determine whether they are significant. We will consider services significant if the blind person provides more than half the total time needed to manage the business, or more than 45 hours a month regardless of the total management time the business required.

Vending Machine Income Received by Blind Vendors under the Randolph-Sheppard Act and Similar Programs

The Randolph-Sheppard Act established a program for persons who are blind to operate vending facilities as a business on Federal property.⁵ The income the blind vendor receives from the operation of the business is self-employment income. In addition, under the Randolph-Sheppard Act program, a blind vendor who operates a vending facility on Federal property may also receive income from vending machines that are located on the same property, even though the blind vendor does not service, operate, or maintain the vending machines.⁶

Various states have established similar programs for persons who are blind to operate vending facilities as a business on state and local government property. Like the Randolph-Sheppard Act program, many of these State programs provide the blind vendor with income from vending machines that are located on the same property but are operated independently of the blind vendor's vending facility business.

⁵ Randolph-Sheppard Act, as amended (20 U.S.C. 107 et seq.); 34 CFR part 395.

⁶ Section 7 of the Randolph-Sheppard Act, as amended (20 U.S.C. 107d-3); 34 CFR 395.8 and 395.32.

The income that blind self-employed vendors receive under the Randolph-Sheppard Act (and similar State programs) from vending machines that are located on the same property, but are not serviced, operated, or maintained by the blind vendor, is not a measure of a blind vendor's own productivity. It does not represent the actual value of any part of the blind vendor's work activity. Since the income a blind vendor receives under this provision of the Randolph-Sheppard Act (or similar State programs) is independent of his or her own vending business, and cannot be attributed to the blind vendor's own work activity, we will not consider this income when we determine whether the self-employment work activity is SGA. We will deduct this income from the blind vendor's net income before we apply the SGA earnings guidelines.

Cross-References: SSR 83-34 Titles II and XVI: Determining Whether Work Is Substantial Gainful Activity – Self-Employed Persons; Program Operations Manual System sections DI 10501.015, DI 10515.005, and DI 10515.010.